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TRUST AGREEMENT

THE DELTA PILOTS DISABILITY AND SURVIVORSHIP TRUST

BETWEEN

DELTA AIR LINES, INC.

AND

THE CHASE MANHATTAN BANK

July 1, 2001

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# THE DELTA PILOTS DISABILITY AND SURVIVORSHIP TRUST

## TRUST AGREEMENT

This Agreement, dated July 1, 2001, is by and between Delta Air Lines, Inc., a corporation organized under the laws of Delaware (hereinafter referred to as the "Company") and THE CHASE MANHATTAN BANK, a banking corporation organized under the laws of the State of New York (hereinafter referred to as the "Trustee").

### RECITALS

A. The Company and certain of its affiliates and wholly-owned subsidiaries maintain the Delta Pilots Disability and Survivorship Plan (the "Plan") to provide life insurance, medical, and/or other benefits as may be provided through an organization described in Section 501(c)(9) of the Code (as defined below) for certain of their employees and may adopt this trust (the "Trust") and this Agreement to serve as the funding vehicle for the Plan;

B. The authority to conduct the general operation and administration of the Plan is vested in the Administrative Committee of Delta Air Lines, Inc. (the "Administrative Committee"), as administrator of the Plan, which shall have the authorities and shall be subject to the duties with respect to the trust specified in the Plan and in this Agreement;

C. The named fiduciary of the Plan with regard to investments is the Benefit Funds Investment Committee of the Board of Directors of the Company (the "BFIC"), which shall have the authorities and shall be subject to the duties with respect to the trust specified in the Plan and in this Agreement;

D. The Company has appointed The Chase Manhattan Bank as successor trustee to Citibank, Federal Savings Bank effective July 1, 2001;

E. Under the Plan, funds will from time to time be contributed to the Trustee, which funds, as and when received by the Trustee, will constitute a trust fund held for the benefit of the members under the Plan or its beneficiaries;

F. The Company desires the Trustee to hold and administer such funds and the Trustee is willing to hold and administer such funds pursuant to the terms of this Agreement; and

G. The Company and the Trustee desire to amend and restate the instrument governing the Trust in its entirety.

## **A G R E E M E N T**

The Company and the Trustee hereby amend and restate the instrument governing the Trust and continue the Trust as the funding vehicle for the Plan, upon the terms and conditions set forth below.

### **ARTICLE 1. DEFINITIONS**

For purposes of this Agreement, the following terms are defined as provided below.

"Applicable Law" means the provisions of any law, or any administrative guideline, ruling, exemption, or determination of a judicial, semi-judicial, regulatory, self-regulatory or statutory authority, in each case, applicable to the Trustee, the Company, or the Plan after taking into account any preemptive effect of ERISA.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Company-Directed Account" means any Investment Account managed by the BFIC, whether because the BFIC or the Company so directs or because an Investment Manager has resigned or been discharged.

"Corporate Action" means any subscription right, bonus issue, stock repurchase plan, redemption, exchange, tender offer, or similar matters with respect to any Securities or Other Property that requires discretionary action by the Trust Fund, but does not include proxy voting.

"Employer" means any corporation which is a member of a controlled group of corporations of which the Company is a member as determined under the Internal Revenue Code of 1986, as amended, and which corporation has adopted this Agreement in accordance with the provisions of Section 12.1.

"ERISA" means the Employee Retirement Income Security Act of 1974 (and the regulations promulgated thereunder), as amended.

"Global Assets" means any Securities or Other Property (a) for which the principal trading market is located outside of the United States, (b) for which presentment for payment is to be made outside of the United States, or (c) which are acquired outside of the United States.

"Instructions" has the meaning set forth in Section 7.2 of this Agreement.

"Investment Account" has the meaning set forth in Section 4.1 of this Agreement.

"Investment Manager" has the meaning set forth in Section 4.2 of this Agreement.

"Liability" means any liability, loss, cost, damage, penalty, fine, obligation or expense of any kind whatsoever (including, without limitation, reasonable attorneys', accountants', consultants' or experts' fees and disbursements).

"Participants" means participants in the Plan and/or their beneficiaries, as the case may be.

"Person" means a natural person, trust, estate, corporation of any kind or purpose, mutual company, joint-stock company, unincorporated organization, association, partnership, joint venture, employee organization, committee, board, participant, beneficiary, trustee, partner or venturer acting in an individual, fiduciary, or representative capacity, as the context may require.

"Securities Depository" means a securities depository, clearing agency, settlement system, dematerialized book entry system or similar system.

"Securities or Other Property" means any property, real or personal, or part interest therein, wherever situated, excluding currency but including, without limitation, governmental, corporate or personal obligations, trust and participation certificates, partnership interests, interest in limited liability companies and similar entities, annuity or investment contracts issued by an insurance company, leaseholds, fee titles, mortgages and other interests in realty, preferred and common stocks, certificates of deposit, financial options and futures or any other form of option, evidences of indebtedness or ownership in foreign corporations or other enterprises or indebtedness or ownership, including Securities or Other Property of the Company, even though the same may not be legal investment for trustees under any law other than ERISA.

"Subcustodian" has the meaning set forth in Section 2.9 of this Agreement.

"Trust Fund" means all assets held by the Trustee in the Trust under the provisions of this Agreement at the time of reference.

## ARTICLE 2. THE TRUST FUND

### 2.1 Trust Title.

This Trust shall be known as the Delta Pilots Disability and Survivorship Trust.

### 2.2 Binding Effect.

All Persons at any time interested in the Plan shall be bound by the provisions of this Trust Agreement and, in the event of any conflict between this Trust Agreement and the provisions of the Plan or any other instrument or agreement forming part of the Plan, the provisions of this Trust Agreement shall control.

### 2.3 Interpretation of Plan.

The Trustee shall not be deemed a party to any Plan, and the Administrative Committee shall be solely responsible for the interpretation of any Plan term or condition affecting any provision of this Agreement. The Company shall be responsible for maintaining the exempt status of the Trust under Section 501(c)(9) of the Code.

### 2.4 Receipt of Assets.

The Trustee shall receive and accept into the Trust Fund all currency and all Securities or Other Property paid to it in accordance with Instructions from an authorized Person, provided that, in the case of Securities or Other Property, such Securities or Other Property are reasonably acceptable to the Trustee. The Trustee need not inquire into the source of any currency or Securities or Other Property transferred to it nor into the authority or right of the transferor of such currency or Securities or Other Property to transfer the same to the Trustee.

### 2.5 Valuation of the Trust Fund.

(a) The parties contemplate that the Trust Fund and its component Investment Accounts shall be valued as of the last calendar day of each month.

(b) Method of Valuation. As of each Valuation Date, the Trustee shall value the property held in each Investment Account. For all purposes of this Trust Agreement, value shall be determined as follows:

(i) The value of any security traded on any generally recognized stock or bond exchange shall be the final sale price reported for the Valuation Date (or, if appropriate, for the last business day preceding the Valuation date) by any such exchange. If no sale is reported for the appropriate date, the average of the most recent bid and offer price shall be utilized, provided that they each are made on the appropriate date. Provided, however, that, if, in the opinion of the Trustee, the final sale price or the closing bid price does not fairly indicate the true value of the security, or there is no bid price, or no exchange quotation is available, the Trustee may obtain a quotation from a reputable broker-dealer or investment banker and utilize such quotation to determine value.

(ii) The value of any short-term obligation which has a maturity of less than twelve months shall, in the sole discretion of the Trustee, be the amortized cost thereof, the bid price for such obligation on the Valuation Date (or, if appropriate, on the last business day preceding the Valuation Date) as furnished to the Trustee by one or more recognized dealers in such obligations, or the fair value thereof on the Valuation Date, as determined by the Trustee in its sole discretion.

(iii) The value of any other property shall be the fair market value thereof of the Valuation Date, as determined by the Trustee in its sole discretion.

(iv) Notwithstanding any other provision of this subparagraph 2.5(e):

(A) Any property purchased, the purchase price of which has not been paid, shall be included for valuation purposes as an asset held, and the cash account shall be adjusted downward by the amount of the purchase price, including any broker's commission and other expenses; and

(B) Any property sold but not delivered shall not be included for valuation purposes, and the cash account shall be adjusted upward by the amount of its net sale price pending receipt of the proceeds.

(v) The Trustee shall determine the Fair Market Value or fair value of securities or other property held in the Trust based upon one or more of the following: information and financial publications of general circulation, statistical and valuation services, records or security exchanges, appraisals by qualified Persons, transactions and bona fide offers in assets of the type in question, valuations provided by Investment Managers, and other information customarily used in the valuation of property. Units in common trust funds shall be valued at the value stated by the trustee of the common trust funds. Units or share in registered investment companies, limited partnerships, limited liability companies, or other funds (each a "Fund") shall be their net asset value or other unit or share value as announced by the Fund or its operator. An Investment Manager shall certify, at the request of the Trustee, the value of any securities or other property held in any Investment Account managed by such Investment Manager, and such certification shall be regarded as an Instruction with regard to such valuation. The Trustee shall be entitled to rely upon such valuation for all purposes under this Agreement.

(vi) Valuations of other property reasonably deemed by the Trustee to be commodity interests or over-the counter options or derivative instruments shall be valued at their last prior sales prices on the principal board of trade or other contracts market in which dealings are made or by quotations from the contraparty bank or party. The BFIC acknowledges that values of derivative instruments are indicative values only based on market levels on the date, or upon change in rates, so indicated. These valuations do not indicate the actual terms at which derivatives could be liquidated or unwound or the calculation or estimate of an amount that would be payable following the designation of an early termination date under any applicable agreement. Valuations or derivatives may be derived from proprietary models (including proprietary models developed by the dealer from which a given derivative was purchased) based upon estimates about relevant future market conditions. Valuations based on other models or different assumptions may yield different results. The Trustee expressly disclaims any responsibility for the accuracy of the models or estimates used in deriving valuations.

## 2.6 No Reversion to Employers.

No portion of the principal or the income of the Trust Fund shall revert to or be recoverable by the Company or any Employer or ever be used for or diverted to any purpose other than for the expenses of administering the Plan or the Trust Fund or for the exclusive benefit of Participants in the Plan and Persons claiming under or through them pursuant to the Plan, provided, however, that if a contribution or any portion thereof is made by the Company or an Employer by a mistake of fact, the Trustee shall, upon written request of the Company or such Employer, return such amounts as may be permitted by law to the Company or such Employer, as appropriate, within one year after the date of payment to the Trustee and assets may be returned to the Employer to the extent that the law permits such transfer. The Trustee shall be under no obligation to return any part of the Trust Fund as provided in this Section 2.6 until the Trustee has received a written certification from the Administrative Committee or its designee that such return is in compliance with this Section 2.6, the Plan, and the requirements of Applicable Law. The Trustee shall rely conclusively on such written certification and shall be under no obligation to investigate or otherwise determine its propriety. Notwithstanding the foregoing, excess insurance premiums, based upon the actuarial experience of the insured, may be rebated to the Company.

## 2.7 Non-Alienation of Benefits.

No benefit to which a Participant is or may become entitled under the Plan shall at any time be subject in any manner to alienation or encumbrance, nor be resorted to, appropriated or seized in any proceeding at law, in equity or otherwise, except as may be required by a federal tax levy made in accordance with Section 6331 of the Code or as otherwise allowed under ERISA and the Code. No Participant or other Person entitled to receive a benefit under the Plan shall, except as specifically provided in the Plan, have power in any manner to transfer, assign, alienate or in any way encumber his or her benefit under the Plan, or any part thereof, and any attempt to do so shall be void.

## 2.8 No Guaranties.

Neither the Company, any Employer, nor the Trustee guaranties the Trust Fund from loss or depreciation, nor the payment of any amount which may become due to any Person under the Plan or this Agreement.

## 2.9 Responsibility With Respect to Global Assets.

(a) Global Assets will be held in the country or other jurisdictions where (i) the principal trading market for such Global Assets is located, (ii) such Global Assets are to be presented for payment, or (iii) such Global Assets are acquired, unless the BFIC or an Investment Manager specifically requires another location acceptable to the Trustee. Foreign currency held as an incident to investments in Global Assets shall be held on deposit with the Trustee (including its foreign branches) unless otherwise invested, subject to any requirement under Applicable Law or local market practice that the Trust Fund maintain a separate cash account with a Subcustodian.

(b) The Trustee may act under this Agreement with respect to Global Assets through the subcustodians with which the Trustee has entered into subcustodial agreements from time to time ("Subcustodians"). Except as otherwise permitted by ERISA, each Subcustodian shall be an eligible subcustodian under Department of Labor Regulation 404b-1(a)(2)(ii)(C), as amended or any successor to that regulation. The Trustee and Subcustodians are authorized to hold any of the Securities or Other Property in their account with any Securities Depository in which they participate. If the BFIC or an Investment Manager wishes to have any assets of the Trust Fund held in the custody of an institution other than the established Subcustodians (or their securities depositories), such arrangement must be authorized by a written agreement, signed by the Trustee and the BFIC. The Trustee reserves the right to refuse to accept delivery of Securities or Other Property in countries and jurisdictions other than those it customarily makes generally available to employee benefit plans from time to time.

(c) The Trustee reserves the right to add new, replace or remove Subcustodians. The BFIC will be given reasonable notice by the Trustee of any such change. Upon request by the BFIC, the Trustee will identify the name, address and principal place of business of any

Subcustodian of the Trust Fund and the name and address of the governmental agency or other regulatory authority that supervises or regulates such Subcustodian.

(d) Each Subcustodian will hold such Securities or Other Property in accounts identified on such Subcustodian's books as special custody accounts for the exclusive benefit of customers of the Trustee. Any Securities or Other Property held by a Subcustodian will be subject only to the instructions of the Trustee or its agent. Any Securities or Other Property held in a Securities Depository for the account of a Subcustodian will be subject only to the instructions of such Subcustodian. Any agreement the Trustee enters into with a Subcustodian for holding its customer's Securities or Other Property shall provide that such Securities or Other Property will not be subject to any right, charge, security interest, lien or claim of any kind in favor of such Subcustodian except for safe custody or administration, and that the beneficial ownership of such Securities or Other Property will be freely transferable without the payment of money or value other than for safe custody or administration.

(e) The Trustee shall be liable for any loss which shall occur as the result of the failure of a Subcustodian to exercise reasonable care with respect to the safekeeping of Securities or Other Property held by it where such loss results directly from the failure by the Subcustodian to use reasonable care in the provision of custodial services by it in accordance with the standards prevailing in its local market or from the willful default of such Subcustodian in the provision of custodial services by it. In cases where compliance with Department of Labor Regulation 404b-1 is based solely on compliance with Paragraph (a)(2)(ii)(C) of that Regulation, however, the Trustee shall be liable, subject to Subsection 2.9(f) of this Agreement, for any loss which shall occur as the result of the failure of a Subcustodian to exercise reasonable care with respect to the safekeeping of Securities or Other Property held by it to the extent required by that Paragraph. Nevertheless, the Trustee will not be responsible for the acts or omissions or insolvency of any Securities Depository or for the insolvency of any Subcustodian which is not a branch or affiliate of Trustee unless (in the case of the insolvency of a Subcustodian) Trustee was negligent in the selection and oversight of that Subcustodian.

(f) It shall be the responsibility of the BFIC or Investment Manager, as the case may be, to be aware of any laws or regulations of any foreign countries or any United States territory or possession which shall apply in any manner whatsoever to any Global Assets held in the Trust Fund and to be aware of Country Risk, as defined below. The Trustee shall have no responsibility for any loss or damage suffered by the Trust Fund or the Plan to the extent that it arises out of Country Risk. "Country Risk" means the risk of investing or holding Securities or Other Property in a particular country including, but not limited to, losses resulting from malfunction, interruption of or error in the transmission of information caused by any machines or system or interruption of communication facilities, abnormal operating conditions, nationalization, expropriation or other governmental actions; regulation of the banking or securities industry; currency restrictions, devaluations or fluctuations; and market conditions which prevent the orderly execution of securities transactions or affect the value of Securities or Other Property.

#### 2.10 Tax Reclamation Services.

(a) Subject to the provisions of this Agreement, the Trustee will apply for a reduction of withholding tax and any refund of any tax paid or tax credits which apply in each applicable market in respect of income payments on Global Assets for the benefit of the Trust Fund which the Trustee believes may be available.

(b) The provision of tax reclamation services is conditional upon the Trustee receiving from the BFIC, the Administrative Committee, or their designees certain documentation (pro forma copies of which are available from the Trustee). If the Trustee does not receive this documentation, it will be unable to provide tax reclamation services.

(c) The Trustee shall not be liable to the Trust Fund, any Plan, or any third party for any taxes, fines or penalties payable by the Trustee or the Trust Fund, and the Trustee shall be indemnified accordingly, whether these result from the inaccurate completion of documents by the BFIC, the Administrative Committee, their designees or any third party, or as a result of the provision to the Trustee or any third party of inaccurate or misleading information or the withholding of material information by the BFIC or the Administrative Committee or any other

third party, or as a result of any delay of any revenue authority or any other matter beyond the Trustee's control.

(d) The Trustee shall perform tax reclamation services only with respect to taxation levied by the revenue authorities of the countries notified to the BFIC and the applicable Investment Manager from time to time and the Trustee may, by notification in writing, at its absolute discretion, supplement or amend the markets in which the tax reclamation services are offered. Other than as expressly provided in the preceding sentence, the Trustee shall have no responsibility with regard to the Trust Fund's or any Plan's tax position or status in any jurisdiction.

(e) The Company confirms that the Trustee is authorized to disclose to the extent reasonable any information requested by any revenue authority or any governmental body in relation to the Trust, any Plan, any Global Assets, or any cash held in the Trust Fund.

(f) Tax reclamation services may be provided by the Trustee or, in whole or in part, by one or more third parties appointed by the Trustee (which may be affiliates of the Trustee); provided that the Trustee shall be liable for the performance of any such third party to the same extent as the Trustee would have been if it performed such services itself.

### **ARTICLE 3. DISBURSEMENTS AND TRANSFERS FROM THE TRUST FUND**

#### **3.1 Disbursements from the Trust Fund.**

(a) The Trustee shall from time to time on the Instructions of the BFIC, the Administrative Committee, or their designees make payments out of the Trust Fund in cash or in-kind to such Persons in such manner, in such amounts and for such purposes as may be specified in the Instructions of the BFIC, the Administrative Committee, or their designees. Payment in response to such Instructions shall be a complete discharge of the Trustee of its responsibility for the holding and safekeeping of such assets and any assets so paid over shall no longer be part of the Trust Fund.

(b) The BFIC or the Administrative Committee shall be responsible for insuring that any payment directed under this Article by Instructions conforms to the provisions of the Plan, this Agreement, and the provisions of ERISA. Each Instruction of the BFIC, the Administrative Committee, or their designees shall be in writing and shall be deemed to include a certification that any payment or other distribution directed thereby is one which the BFIC, the Administrative Committee, or their designees are authorized to direct. The Trustee shall not incur any liability or other damage on account of any payments or other distributions made by it in accordance with the written Instructions of the BFIC or the Administrative Committee. The Company may elect to appoint a third party agent for benefit payments upon notice to the Trustee, in which event, the Trustee's sole duty shall be to make payments to, or receive amounts back from, such agent as may be directed by the Committee or its delegate in Instructions.

### 3.2 Transfer of Trust Assets.

In order to facilitate the investment of the Trust Fund, the Company, or an Investment Manager with the written approval of the BFIC, may provide Instructions directing the Trustee to enter into custody arrangements with third parties reasonably acceptable to the Trustee and transfer currency and/or Securities or Other Property from the Trust Fund to the custody of that third party. Securities or Other Property held under such a custody arrangement shall not be listed in any statement or report regarding the Trust Fund prepared by the Trustee under this Agreement or Applicable Law. Except as otherwise required by ERISA, the Trustee shall not be responsible for monitoring the performance or creditworthiness of such a third party custodian.

### 3.3 Reserved.

### 3.4 Settlement of Securities Transactions.

Settlement of purchases and sales of Securities or Other Property may be conducted in accordance with prevailing standards of the market in which the transaction occurs. The risk of non-receipt of payment or other consideration shall be the Trust's and the Trustee shall have no liability for the failure of the Trust Fund to receive the same. All credits to the Trust Fund of the anticipated proceeds of sales and redemptions of property and of anticipated income from

property shall be conditional upon receipt by the Trustee of final payment and may be reversed to the extent final payment is not received.

#### ARTICLE 4. INVESTMENT OF THE TRUST FUND

##### 4.1 Establishment of Investment Accounts.

(a) The BFIC, from time to time and in accordance with provisions of the Plan, may provide Instructions directing the Trustee to establish one or more separate investment accounts within the Trust Fund, each separate account being hereinafter referred to as an "Investment Account." The Trustee shall transfer to each Investment Account those assets of the Trust Fund in accordance with such Instructions. The BFIC also may provide Instructions directing the Trustee to eliminate one or more Investment Accounts, and the Trustee shall thereupon dispose of the assets of any such Investment Account and reinvest the proceeds in accordance with the Instructions of the BFIC. The Trustee shall be under no duty to question, and shall not incur any liability on account of following, any Instruction of the BFIC with respect to the establishment or elimination of any Investment Account or the allocation or transfer of Securities or Other Property between or among any Investment Accounts. The Trustee shall be under no duty to review the investment guidelines, objectives and restrictions established, or the specific investment Instructions given, by the BFIC for any Investment Account, or to make suggestions to the BFIC in connection therewith.

(b) All interest, dividends and other income received with respect to, and any proceeds received from the sale, exchange, or other disposition of, Securities or Other Property held in an Investment Account shall be credited to and reinvested in that Investment Account. All expenses of the Trust Fund which are allocable to a particular Investment Account shall be so allocated and charged.

##### 4.2 Investment Managers.

(a) The BFIC, from time to time and in accordance with the provisions of the Plan, may appoint one or more investment managers meeting the qualifications set forth in Section 3(38) of ERISA, or any successor thereto (each an "Investment Manager"), under a written

investment management agreement describing the powers and duties of the Investment Manager, to direct the investment and reinvestment of all or a portion of an Investment Account. The BFIC shall be responsible for ascertaining that, while each Investment Manager is acting in that capacity, that Investment Manager satisfies the requirements of Section 3(38) of ERISA, or any successor thereto. The BFIC shall furnish the Trustee with written notice of the appointment of each Investment Manager hereunder, and of the termination of any such appointment. Such notice shall specify the assets which shall constitute the Investment Account. The Trustee shall be fully protected in relying upon the effectiveness of such appointment and the Investment Manager's continuing satisfaction of the requirements set forth above until it receives written notice from the BFIC to the contrary.

(b) The Trustee shall conclusively presume that each Investment Manager, under its investment management agreement, is entitled to act, in directing the investment and reinvestment of the Investment Account for which it is responsible, in its sole and independent discretion and without limitation. The Trustee shall have no responsibility with respect to the formulation of or compliance with any investment or diversification policies established with respect to any Investment Account unless the Trustee or an affiliate of the Trustee is the Investment Manager of the Investment Account.

(c) If the Trustee concludes that it may be subject to a conflict of interest with respect to a transaction relating to Securities or Other Property held in the Trust Fund which might affect, or have the appearance of affecting, the performance of its fiduciary responsibilities under this Agreement, the Trustee may, in its discretion, select a third party to exercise the Trustee's fiduciary responsibilities with respect to the transaction. Provided that the third party is reasonably acceptable to the BFIC and satisfies the criteria set forth in Section 4.2(a) of this Agreement, the BFIC shall engage such third party as an Investment Manager for the limited purpose described in the previous sentence. The Trustee shall pay the fees of such an Investment Manager with respect to this limited engagement.

#### 4.3 Company Directed Investment Accounts.

The Trustee shall, if so directed by the BFIC in written Instructions, segregate all or a portion of the Trust Fund held by it into one or more separate investment accounts to be known as Company-Directed Accounts, with respect to which the BFIC shall have the powers and duties granted to an Investment Manager under this Agreement. The BFIC, by written Instructions to the Trustee, may at any time relinquish its powers under this Section 4.3 and direct that a Company-Directed Account shall no longer be maintained. In addition, during any time when there is no Investment Manager with respect to an Investment Account (such as before an investment management agreement takes effect or after it terminates), the BFIC shall direct the investment and reinvestment of such Investment Account. Whenever the BFIC is directing the investment and reinvestment of an Investment Account or a Company-Directed Account, the BFIC shall have the powers and duties which an Investment Manager would have under this Agreement if an Investment Manager were then serving and the Trustee shall be protected in relying on the BFIC's Instructions without reviewing investments or making suggestions to the same extent as it would be protected under this Agreement if it had relied on the Instructions of an Investment Manager.

#### 4.4 Trustee Directed Investment Accounts.

(a) If the BFIC or an Investment Manager wish the Trustee to invest cash held in the Trust Fund or an Investment Account on a short-term basis, the BFIC or the Investment Manager (as the case may be) may select one of the common trust funds maintained by the Trustee from time to time for this purpose and give the Trustee instructions (including standing instructions) to transfer cash to that common trust fund pending investment or disbursement. Otherwise, the Trustee shall have no duty or responsibility to direct the investment and reinvestment of the Trust Fund or any Investment Account unless expressly agreed to in writing between the Trustee and the BFIC. In the event that the Trustee enters into such an agreement, it shall have the powers and duties of an Investment Manager under this Agreement with regard to that Investment Account.

(b) The Trustee shall make every reasonable effort to invest cash received by the Trust Fund in accordance with the provisions of Section 4.4(a). In the event the Trustee receives cash with respect to the Trust Fund (in the same denomination as that used for the common trust fund selected by the BFIC or Investment Manager) following the cut-off time for investment in that common trust fund, the Trustee shall invest such cash in that common trust fund on the next business day, unless it is otherwise Instructed by an Authorized Person as to the disposition of that cash. Moreover, interest paid on any deposits of the Trust Fund shall be credited promptly to the Trust Fund.

4.5 Reserved.

4.6 Investments in Company Securities and Company Real Property.

If, and to the extent specifically authorized by the Plan, the BFIC may provide Instructions directing the Trustee to establish one or more Investment Accounts the assets of which shall be invested primarily in securities which constitute “qualifying employer securities” or “qualifying employer real property” within the meaning of Section 407 of ERISA. It shall be the duty of the BFIC to determine that such investment is not prohibited by Sections 406 or 407 of ERISA. The BFIC shall at all times have the full fiduciary responsibility with respect to the investment of any such Investment Account, and the Trustee’s responsibilities with respect to such an Investment Account shall be no different than if an Investment Manager were appointed with respect to that Investment Account.

4.7 Certain Orders to Brokers.

Except as otherwise provided in this Agreement, the Investment Manager of an Investment Account (or the BFIC in the case of a Company-Directed Account) shall have the power and authority to be exercised in its sole discretion at any time and from time to time, to issue orders for the purchase or sale of Securities or Other Property directly to a broker. Written Instructions with respect to the issuance of each such order shall be given promptly to the Trustee by the Investment Manager or the BFIC and the confirmation of each such order shall be confirmed to the Trustee by the broker. Unless otherwise directed by the BFIC or Investment Manager, such Instructions shall be authority for the Trustee to pay for Securities or Other

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Property purchased or to deliver Securities or Other Property sold as the case may be. Upon Instructions from the Investment Manager or the BFIC, the Trustee will execute and deliver appropriate trading authorizations, but no such authorization shall be deemed to increase the liability or responsibility of the Trustee under this Agreement.

4.8 Proxies.

(a) Subject to and upon the terms of this sub-section, the Trustee will provide the applicable Investment Manager (or the BFIC in the case of a Company-Directed Account) with information which it receives on matters to be voted upon at meetings of holders of Securities or Other Property ("**Notifications**"), and the Trustee will act in accordance with instructions in relation to such Notifications ("**the active proxy voting service**") if provided in a timely manner.

(b) The following provisions relate to proxy voting services with respect to Global Assets:

- (i) If information is received by the Trustee at its proxy voting department too late to permit timely voting by the Investment Manager or the BFIC, as the case may be, the Trustee's only obligation is to provide, so far as reasonably practicable, a Notification (or summary information concerning a Notification) on an "information only" basis.
- (ii) The active proxy voting service is available only in those markets designated by the Trustee from time to time;
- (iii) The Trustee may provide Notifications or parts thereof in the language received;
- (iv) Notifications and other information furnished pursuant to the active proxy voting service ("**information**") are proprietary to the Trustee and the Trustee owns all intellectual property rights, including copyrights and patents, embodied therein. Accordingly, neither an Investment Manager, the Company, the BFIC, or any other

Person may make any use of such information except in connection with the active proxy voting service; and

- (v) In markets where the active proxy voting service is not available or where the Trustee has not received its standard documentation, the Trustee will not provide Notifications but will endeavor to act upon Instructions to vote on matters before meetings of holders of Global Assets where it is reasonably practicable for the Trustee (or its Subcustodians or nominees as the case may be) to do so and where such Instructions are received in time for the Trustee to take timely action (the “passive proxy voting service”).

(c) The provision of any proxy voting service (whether active or passive) may be precluded or restricted under a variety of circumstances. These circumstances include, but are not limited to, the Securities or Other Property being on loan or out for registration, the pendency of conversion or another corporate action, Securities or Other Property being held at the request of the BFIC, the Company, or an Investment Manager in a name not subject to the control of the Trustee or (in the case of Global Assets) its Subcustodian, in a margin or collateral account at the Trustee or another bank or broker, or otherwise in a manner which affects voting, local market regulations or practices, or restrictions by the issuer. Additionally, in some cases the Trustee may be required to vote all shares held for a particular issue for all of the Trustee's customers in the same way. The Trustee will inform the Investment Manager (or the BFIC in the case of a Company-Directed Account) where this is the case.

#### 4.9 Corporate Actions.

(a) The Trustee will follow Corporate Actions and advise the applicable Investment Manager (or the BFIC in the case of a Company-Directed Account) of those Corporate Actions of which the Trustee receives notice at its central corporate actions department from the issuer or from the depository in which the applicable Securities or Other Property are maintained or notice published in publications and reported in reporting services routinely used by the Trustee for this purpose.

(b) If an authorized Person fails to provide the Trustee with timely Instructions with respect to any Corporate Action, neither the Trustee nor its Subcustodians or their respective nominees will take any action in relation to that Corporate Action, except as otherwise agreed in writing by the Trustee and the applicable Investment Manager (or the BFIC, as the case may be) or as may be set forth by the Trustee as a default action in the advice it provides under Section 4.10(a) with respect to that Corporate Action.

#### 4.10 Reliance on Investment Manager or BFIC.

The Trustee shall have no duty to monitor the Trust Fund's rights as owner of any investment directed by an Investment Manager or the BFIC (in the case of a Company-Directed Account), to make any independent investigation or inquiry to determine whether a transaction will constitute a prohibited transaction under ERISA or the Code or whether an investment is authorized under this Agreement or any other agreement or law affecting the Investment Manager's or the BFIC's authority. In addition, the Trustee shall not be responsible for the form, genuineness, validity, sufficiency or effect of any document executed or held by the Trustee (or delivered to the Trustee) on the instructions of an Investment Manager or the BFIC or if, for any reason (other than the negligence or willful misconduct of the Trustee), any rights of the Trust Fund therein shall lapse or shall become unenforceable or worthless.

### **ARTICLE 5. POWERS OF THE TRUSTEE**

#### 5.1 Investment Powers of the Trustee.

The Trustee shall have and exercise the following powers and authority (i) over Investment Accounts where it has express investment management discretion as provided in Section 4.4, and (ii) upon Instructions from an Investment Manager, the Administrative Committee, the Company, or the BFIC, as the case may be, for all other Investment Accounts:

- (a) To purchase, receive or subscribe for any Securities or Other Property and to retain in trust such Securities or Other Property;

- (b) To acquire and hold qualifying employer securities and qualifying employer real property, as such investments are defined in Section 407(d) of ERISA;
- (c) To sell for cash or on credit, to grant options, convert, redeem, exchange for other Securities or Other Property, to enter into standby agreements for future investment, either with or without a standby fee, or otherwise to dispose of any Securities or Other Property at any time held by it;
- (d) To settle, compromise or submit to arbitration any claims, debts, or damages, due or owing to or from the Trust, to commence or defend suits or legal proceedings and to represent the Trust in all suits or legal proceedings in any court of law or before any other body or tribunal;
- (e) To trade in financial options and futures, (including index options and options on futures); to enter into repurchase agreements, reverse repurchase agreements, swaps, caps, floors, straddles, collars and other derivative arrangements; and to execute in connection therewith such account agreements and other agreements in such form and upon such terms as the Investment Manager or the BFIC shall direct;
- (f) To exercise all voting rights, tender or exchange rights, any conversion privileges, subscription rights and other rights and powers available in connection with any Securities or Other Property at any time held by it; to oppose or to consent to the reorganization, consolidation, merger or readjustment of the finances of any corporation, company or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company or association any of the Securities or Other Property which may at any time be held by it and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments or subscriptions, which may be deemed necessary or advisable by the Investment Manager or BFIC in connection therewith, and to hold and retain any Securities or Other Property which it may so acquire; and to deposit any property with

any protective, reorganization or similar committee, and to pay and agree to pay part of the expenses and compensation of any such committee and any assessments levied with respect to property so deposited;

(g) To invest all or a portion of the Trust Fund in contracts issued by insurance companies. The Trustee shall be entitled to rely upon any written Instructions of the BFIC or the Investment Manager under this Section 5.1, and the Trustee shall not be responsible for the terms of any insurance contract that it is directed to purchase and hold or for the selection of the issuer thereof or for performing any functions under such contract (other than the execution of any documents incidental thereto on the instructions of the BFIC or the Investment Manager);

(h) To manage, administer, operate, lease for any number of years, develop, improve, repair, alter, demolish, mortgage, pledge, grant options with respect to, or otherwise deal with any real property or interest therein at any time held by it, and to hold any such real property in its own name or in the name of a nominee, with or without the addition of words indicating that such property is held in a fiduciary capacity, all upon such terms and conditions as may be deemed advisable by the Investment Manager or BFIC;

(i) To renew, extend or participate in the renewal or extension of any mortgage, upon such terms as may be deemed advisable by the Investment Manager or BFIC, and to agree to a reduction in the rate of interest on any mortgage or of any guarantee pertaining thereto in any manner and to any extent that may be deemed advisable by the Investment Manager or BFIC for the protection of the Trust Fund or the preservation of the value of the investment; to waive any default, whether in the performance of any covenant or condition of any mortgage or in the performance of any guarantee, or to enforce any such default in such manner and to such extent as may be deemed advisable by the Investment Manager or BFIC; to exercise and enforce any and all rights of foreclosure, to bid on property on foreclosure, to take a deed in lieu of foreclosure with or without paying consideration therefor, and in connection therewith to release the obligation on the bond

secured by such mortgage, and to exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any such mortgage or guarantee;

(j) To lend pursuant to separate agreement as may be agreed upon any securities to brokers or dealers and to secure the same in any manner, and during the term of any such loan to permit the loaned securities to be transferred into the name of and voted by the borrower or others;

(k) To purchase, enter, sell, hold, and generally deal in any manner in and with contracts for the immediate or future delivery of financial instruments of any issuer or of any other property; to grant, purchase, sell, exercise, permit to expire, permit to be held in escrow, and otherwise to acquire, dispose of, hold and generally deal in any manner with and in all forms of options in any combination; and, in connection with its exercise of the powers granted in this Agreement, to deposit any currency or Securities or Other Property as collateral with any broker-dealer or other Person, to permit Securities or Other Property to be held by or in the name of others or in transferable form, to retain any form of Securities or Other Property received as a result of the exercise of any of the foregoing powers whether or not investment in such Securities or Other Property is otherwise authorized under this Agreement and to hold and administer any currency or Securities or Other Property with respect to which the foregoing powers have or may be exercised, including any securities or collateral acquired by it or in any property received as a result of its exercise of such powers, as a part of the account subject to the foregoing powers, or in any sub-account, which property may be invested in Securities or Other Property of different types than the Securities or Other Property otherwise held in the account;

(l) To hold part or all of the Trust Fund uninvested to the extent that the directing party ascertains as reasonable and necessary for limited periods of time;

(m) To borrow money on a secured or unsecured basis and to enter into, execute, and deliver notes, agreements, mortgages, and other instruments in that regard;

- (n) To employ suitable agents and counsel and to pay their reasonable and proper expenses and compensation;
- (o) To purchase and sell foreign exchange and contracts for foreign exchange, including transactions entered into with the Trustee, its agents or Subcustodians;
- (p) To form corporations, partnerships, limited liability companies, associations and other entities and to create trusts to hold title to any currency or Securities or Other Property, all upon such terms and conditions as may be deemed advisable by the Investment Manager or BFIC;
- (q) To invest as the Trustee (i) in any type of interest bearing investments (including, but not limited to savings accounts, money market accounts, certificates of deposit and repurchase agreements) and (ii) in non-interest bearing accounts (including, but not limited to checking accounts); and
- (r) To appoint ancillary trustees to hold any portion of the assets of the Trust and to pay their reasonable expenses and compensation.

## 5.2 Administrative Powers of the Trustee.

(a) Notwithstanding the appointment of an Investment Manager, the Trustee shall have the following powers and authority, to be exercised in its sole discretion, with respect to the Trust Fund:

- (i) To employ suitable agents, custodians and counsel and (except for Subcustodians) to pay their reasonable expenses and compensation out of the Trust Fund;
- (ii) To register any Securities or Other Property held by it hereunder in its own name or in the name of a nominee with or without the addition of words indicating that such

Securities or Other Property are held in a fiduciary capacity and to hold any Securities or Other Property in bearer form and to deposit any Securities or Other Property in a depository or clearing corporation;

(iii) To permit overdrafts in any Investment Account in connection with the settlement of investment transactions relating to, or the distribution of funds from, the Trust Fund, (and the Investment Manager, if any, of such Investment Account shall be deemed to have requested the Trustee to permit such overdraft under the terms and conditions announced by the Trustee from time to time for overdrafts); to repay any such overdraft out of the Trust Fund; to permit the party extending any such overdraft (including the Trustee in its corporate capacity) to set the overdraft off against any cash balances in the Trust Fund; and to pay reasonable compensation to the party extending the overdraft for its services (or reimburse that party for its expenses) to the extent permitted under Applicable Law;

(iv) To reverse any erroneous or provisional credit entries to the Trust Fund retroactively to the date upon which the correct entry or no entry should have been made;

(v) To make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers; and

(vi) Generally to do all ministerial acts, whether or not expressly authorized, which the Trustee may deem necessary or desirable in carrying out its duties under this Agreement.

(b) The Trustee may consult with legal counsel concerning questions which may arise with reference to this Agreement and its powers and duties as trustee in the event that (i) the Trustee has not received Instructions in the usual periods of time for such communications or (ii) the Trustee has not received representations to its satisfaction that an Instruction is a proper one under this Agreement or Applicable Law. To the extent permissible by Applicable Law, the

written opinion of such counsel shall be full and complete protection of the Trustee in respect to any action taken or suffered by the Trustee hereunder in good faith reliance on the opinion.

## **ARTICLE 6. RESPONSIBILITY OF TRUSTEE; INDEMNIFICATION; CONTRIBUTION**

### **6.1 Responsibility of the Trustee.**

(a) The Trustee shall be responsible for the performance of only such duties as are set forth in this Agreement (or otherwise agreed upon in writing by the Trustee), are imposed on the Trustee by ERISA, or expressly contained in instructions from the BFIC, the Administrative Committee, the Company, or an Investment Manager which are consistent with the provisions of this Agreement and with the Trustee's operations and procedures.

(b) The Trustee shall perform those duties under this Agreement which constitute it as a fiduciary under ERISA in accordance with the standard of care set forth in Section 404(a) of ERISA; the Trustee shall exercise reasonable care with respect to its remaining duties and obligations under this Agreement.

(c) Except as otherwise required by ERISA, under no circumstances shall the Trustee incur liability for any indirect, incidental, consequential or special damages (including, without limitation, lost profits) of any form incurred by any Person, whether or not foreseeable and regardless of the form of the action in which such a claim may be brought (collectively "Consequential Damages"), with respect to the Trust or its role as Trustee.

(d) The Trustee shall not be under any duty to require payment of any contributions to the Trust Fund, or to see that any payment made to it is computed in accordance with the provisions of the Plan, or otherwise be responsible for the adequacy of the Trust Fund to meet and discharge any liabilities under the Plan, such duties and responsibilities being assigned to other fiduciaries to the Plan.

## 6.2 Indemnification and Contribution by the Company.

(a) The Company shall indemnify and save harmless the Trustee, its affiliates, and their officers, agents and employees for and from any Liability arising (i) out of any matter as to which the Trustee is given Instructions or otherwise directed, or this Agreement provides that the Trustee is protected, not liable, or not responsible, or as to which the Trustee has acted in accordance with this Agreement and ERISA, or (ii) by reason of any breach of any statutory or other duty owed to the Plan by the Company, any Employer, the BFIC, the Administrative Committee, any Investment Manager or any delegate of any of them, provided that the Trustee does not participate knowingly in, or knowingly undertakes to conceal, any act or omission of any such Person acting as a fiduciary to any Plan, knowing such act or omission to be a breach of fiduciary responsibility by such Person.

(b) The Trustee, its affiliates, and their officers, agents and employees (each a "Trustee Party") may bring action against the Company and any Employer to contribute to the satisfaction of any judgment or settlement of a third party claim asserted against the Trustee Party with respect to the Trust Fund or its actions or omissions with respect thereto to the extent that (i) the judgment or settlement is not subject to indemnification under Subsection (a) and (ii) the Liability resulting in the judgment or settlement is caused by the culpable conduct of the Company, any Employer, the Committee or any of their respective affiliates or agents.

(c) The foregoing rights of indemnification and contribution shall not limit any rights or remedies that may be available to the Trustee under Applicable Law.

## 6.3 Liability of the Trustee to Certain Parties and Contribution by the Trustee.

(a) Subject to Subsection 6.1(c), the Trustee will be liable to the Company, the Company's directors, officers, and employees, BFIC (and each of its members), the Administrative Committee (and each of its members) for any Liabilities incurred by the Company in connection with this Agreement as a direct result of the Trustee's breach of its standard of care under Subsection 6.1(b) of this Agreement in performing its duties and

responsibilities under this Agreement. This provision shall survive the termination of this Agreement for any reason.

(b) The Company, its affiliates, and their officers, agents and employees (each a "Company Party") may bring action against the Trustee to contribute to the satisfaction of any judgment or settlement of a third party claim asserted against a Company Party with respect to the Trust Fund or its actions or omissions with respect thereto to the extent that the Liability resulting in the judgment or settlement is caused by the breach by the Trustee or any of its affiliates or agents of its standard of care under Section 6.1(b) of this Agreement, provided that the Trustee shall not be obligated to contribute to any such judgment or settlement to the extent that such judgment or settlement is for a Consequential Damage that the Trustee is not precluded from disclaiming by Section 410(a) of ERISA.

(c) The foregoing rights shall not limit any rights or remedies that may be available to the Company, the BFIC, or the Administrative Committee under Applicable Law.

## ARTICLE 7. INSTRUCTIONS

### 7.1 Authority of Administrative Committee and BFIC; Power of Administrative Committee, the BFIC and Investment Managers to Designate Persons Authorized to Act.

(a) Except to the extent otherwise specifically directed by the Administrative Committee or the BFIC in written Instructions, any Person who is a member of each respective committee may provide Instructions directing the Trustee on behalf of his or her respective committee as a whole. The Trustee may continue to rely on the authority of each Person designated by the Company as a member of the BFIC or the Administrative Committee until notified through written Instructions that that Person has ceased to act in that capacity.

(b) The BFIC or the Administrative Committee may appoint one or more Persons (who may be, but are not required to be employees of the Company or any Employer) to act on its behalf on matters relating to the Trust Fund and this Agreement, and, from time to time, it shall certify to the Trustee the name or names of any Person or Persons so authorized to act.

Except to the extent specifically disclosed in writing to the Trustee, any such Person is authorized to act on behalf of the BFIC or Administrative Committee as a whole. The Trustee may continue to rely on the authority of a Person to act for the BFIC or Administrative Committee until the BFIC or Administrative Committee or the Company notifies the Trustee that that Person is no longer authorized to act for the BFIC or Administrative Committee.

(c) Any Investment Manager appointed by the Company may designate one or more Persons, each of whom shall be authorized to give Instructions on behalf of such Investment Manager. From time to time the Investment Manager shall certify to the Trustee the name or names of any Person or Persons so authorized to act. The Trustee may continue to rely upon the authority of a Person to act for the Investment Manager until the Investment Manager files a subsequent certification with the Trustee.

#### 7.2 Acting on Instructions; Unclear Instructions.

(a) The Trustee is authorized to act under this Agreement (or to refrain from taking action) in accordance with instructions, notices, or directions received by the Trustee, via telephone, telex, facsimile transmission, or other teleprocess or electronic instruction or trade information system acceptable to the Trustee ("Instructions"). The Trustee will have no responsibility for the authenticity or propriety of any Instructions that the Trustee believes in good faith to have been given by an authorized Person, provided that either (i) the Trustee has complied with its customary authentication processes for testing the authenticity of the Instruction or (ii) the Instructions are transmitted with proper testing or authentication pursuant to terms and conditions that the Trustee may specify, unless either the Trustee has caused the confidentiality of the security codes for such Instructions to be compromised or the Trustee has been specifically notified that the confidentiality of those security codes have been compromised by the acts or omissions of another Person. The Trustee is authorized to the extent permitted by Applicable Law to accept and act upon any Instructions received by it without inquiry. Subject to the Trustee's compliance with the foregoing, the Trustee is authorized to the extent permitted by Applicable Law to accept and act upon any Instructions received by it without inquiry.

(b) Unless otherwise expressly provided, all Instructions will continue in full force and effect until cancelled or superseded.

(c) The Trustee may (in its sole discretion and without prejudice to the foregoing) seek clarification or confirmation of an Instruction from an authorized Person and may decline to act upon an Instruction if it does not receive clarification or confirmation satisfactory to it. The Trustee will not be liable for any loss arising from any delay while it seeks such clarification or confirmation.

### 7.3 Confirmation of Oral Instructions/ Security Devices.

Any Instructions delivered to the Trustee by telephone or facsimile transmission will promptly thereafter be confirmed in writing by an authorized Person. Each confirmation is to be clearly marked "Confirmation". The Trustee shall not be liable for having followed such Instructions notwithstanding the failure of an authorized Person to send such confirmation in writing or the failure of such confirmation to conform to the telephone or facsimile Instructions received. Either party may electronically record any of their telephonic communications. The Company, the BFIC, the Administrative Committee, and each Investment Manager will be responsible for safeguarding any test keys, identification codes or other security devices that the Trustee may make available to them or any authorized Person.

## ARTICLE 8. TAXES AND TRUSTEE COMPENSATION

### 8.1 Taxes.

The Trustee shall pay out of the Trust Fund all real and personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws against the Trust Fund. Until advised to the contrary by the Administrative Committee, the Trustee shall assume that the Trust is exempt from Federal, state and local income taxes, and shall act in accordance with that assumption. The Administrative Committee shall timely file all Federal, state and local taxes and information returns relating to the Plan and Trust.

## 8.2 Expenses and Compensation.

(a) Compensation. The Trustee shall be entitled to reasonable compensation for its services in such amount as may be agreed upon from time to time by the Trustee and the Company. The compensation of the Trustee shall be charged to and paid out of the assets of the Trust Fund after a statement of such compensation is received by the Company.

(b) Expenses. Reasonable costs, charges and expenses incurred by the Trustee in connection with the administration, management, investment and protection of the Trust shall be paid from the Trust Fund, unless the Company relieves the Trust Fund of such obligation by paying such costs, charges or expenses. In addition, when directed by the Company in writing, the Trustee shall also pay from the Trust Fund the reasonable fees and direct expenses incurred in the administration of the Plan. If the Company shall advance the payment of any reasonable and properly incurred fees, charges, costs or expenses that would otherwise be paid directly from the Trust Fund under this Section 8.2, the Company will so inform the Trustee in writing that it has advanced such payment and direct the Trustee to reimburse the Company for the amount of such payment.

## **ARTICLE 9. RECORDS AND ACCOUNTS OF THE TRUSTEE**

### 9.1 Records Relating to the Trust.

The Trustee shall maintain or cause to be maintained suitable records, data and information relating to its functions hereunder. These records shall be open to inspection and audit, upon reasonable notice and during regular business hours, by the Administrative Committee, the BFIC, or its duly authorized representatives and each Investment Manager. The Trustee shall be entitled to reasonable compensation and reimbursement of its reasonable expenses incurred in connection with such audits or inspections.

### 9.2 Computerized Access to Trust Fund Records.

The Company, the Administrative Committee, the BFIC, or an Investment Manager may request the Trustee to provide them with on-line access to certain current records and reports relating to the Trust Fund or certain Investment Accounts. If the Trustee agrees to do so, the records and unaudited reports accessible on-line will be unaudited and may not be accurate due to inaccurate pricing of Securities or Other Property, delays in updating the accounting records of the Trust Fund and other causes. The Trustee will not be liable for any loss or damage arising out of the inaccuracy of any such records or unaudited reports accessed on-line.

### 9.3 Trust Accountings.

(a) Within sixty days after the close of each month and at more frequent intervals if agreed to by the parties hereto, the Trustee shall render to the Company a written statement and account showing in reasonable summary the investments, receipts, disbursements, and other transactions engaged in during the preceding month or period, and setting forth the assets and liabilities of the Trust. Within sixty days after the close of each fiscal year, and within sixty days after the removal or resignation of the Trustee as provided hereunder, the Trustee shall render to the BFIC a similar statement and account for that fiscal year. The BFIC shall promptly review each statement and account and advise the Trustee in writing of any errors or omissions reflected therein. Unless the BFIC shall have filed with the Trustee written exceptions or objections to any such statement and account within sixty days after receipt thereof, the Company shall be deemed to have approved such statement and account, and in such case or upon written approval by the BFIC of any such statement and account, the Trustee shall be released and discharged with respect to all matters and things embraced in such statement and account to the full extent permissible under Applicable Law as though it had been settled by a decree of a court of competent jurisdiction in an action or proceeding in which the BFIC, the Company, all other necessary parties and all Persons having any beneficial interest in the Trust Fund were parties.

(b) Nothing contained in this Agreement or in the Plan shall deprive the Trustee of the rights to have a judicial settlement of its account. In any proceeding for a judicial settlement of the Trustee's accounts or for instructions in connection with the trust, the only necessary

parties thereto in addition to the Trustee shall be the BFIC and the Company, and no Participant or other Person having or claiming any interest in the Trust Fund shall be entitled to any notice or service of process (except as required by Applicable Law). Any judgment, decision or award entered in any such proceeding or action shall be conclusive upon all interested Persons.

#### **ARTICLE 10. RESIGNATION AND REMOVAL OF TRUSTEE**

The Trustee may resign at any time by giving sixty days' prior written notice to the Administrative Committee, which notice may be waived by the Administrative Committee. The Company may remove the Trustee at any time upon sixty days' prior written notice to the Trustee, which notice may be waived by the Trustee. In the case of the resignation or removal of the Trustee, the Company shall appoint a successor trustee. The removal of a Trustee and the appointment of a new Trustee shall be by a written instrument delivered to the Trustee. Upon the appointment of a successor trustee and after the final account of the resigning or removed Trustee has been approved or settled, as provided in Article 9, the resigning or removed Trustee shall transfer or deliver the Trust Fund to such successor trustee or, in its discretion, to a court of competent jurisdiction if a successor trustee has not accepted appointment within a reasonable time.

#### **ARTICLE 11. TERMINATION**

This Agreement and the Trust may be terminated at any time by the Company, and upon such termination or upon the dissolution or liquidation of the Company, in the event that a successor to the Company by operation of law or by the acquisition of its business interests shall not elect to continue the Plan and the Trust, the Trust Fund shall be paid out by the Trustee after the settlement of its final account when directed by the Committee through written Instructions. Notwithstanding the foregoing, the Trustee shall not be required to pay out any assets of the Trust Fund upon termination of the Trust until the Trustee has received written certification from the Administrative Committee: (a) that all provisions of law with respect to such termination have been complied with; and (b) (after the Trustee has made a determination of the fair market value of the Plan's assets) that the Plan's assets are sufficient to discharge when due all obligations of

the Plan required by law. The Trustee may rely conclusively on such written certification, and shall be under no obligation to investigate or otherwise determine its propriety.

## ARTICLE 12. RESERVED

## ARTICLE 13. MISCELLANEOUS

### 13.1 Governing Law and Jurisdiction.

Unless governed by ERISA, this Agreement shall be construed in accordance with the laws of the State of New York without regard to the conflict of laws principles thereof. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LAWSUIT OR JUDICIAL PROCEEDING ARISING OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

### 13.2 Entire Agreement; Amendment.

This Agreement, together with any fee agreement between the parties, sets out the entire agreement between the parties in connection with the subject matter, and this Agreement supersedes any prior agreement, statement, or representation relating to the obligations of the Trustee, whether oral or written. This Agreement may be amended by written agreement between the Trustee and the Company at any time or from time to time, and the provisions of any such amendment may be applicable to the Trust Fund as constituted at the time of the amendment as well as to the part of the Trust Fund subsequently acquired.

### 13.3 Duty to Furnish Information.

The Administrative Committee, the BFIC, and the Company on the one hand, and the Trustee on the other, each shall furnish to the other any documents, reports, returns, statements, or other information that the other reasonably deems necessary to perform its duties imposed under the Plan or this Agreement or otherwise imposed by Applicable Law.

#### 13.4 Survival.

The provisions of Articles 6 through 9 shall survive termination of the Trust created under this Trust Agreement or resignation or removal of the Trustee for any reason.

#### 13.5 Reserved.

#### 13.6 Force Majeure.

The Trustee will maintain and update from time to time business continuation and disaster recovery procedures with respect to its global custody business that it determines from time to time meet reasonable commercial standards. The Trustee will have no liability, however, for any damage, loss, expense or liability of any nature that any Person may suffer or incur, caused by an act of God, fire, flood, civil or labor disturbance, war, act of any governmental authority or other act or threat of any authority (de jure or de facto), legal constraint, fraud or forgery, malfunction of equipment or software (except to the extent such malfunction is primarily attributable to the Trustee's negligence in maintaining the equipment or software), failure of or the effect of rules or operations of any external funds transfer system, inability to obtain or interruption of external communications facilities, or any cause beyond the reasonable control of the Trustee (including without limitation, the non-availability of appropriate foreign exchange).

#### 13.7 Necessary Parties to Disputes.

Necessary parties to any accounting, litigation or other proceedings shall include only the Trustee and the Company, and the settlement or judgment in any such case in which the Company and the Trustee are duly served or cited shall be binding upon the Administrative Committee, the BFIC, the Company, each Employer, and all Participants and their estates, and upon all Persons claiming by, through or under them.

#### 13.8 Severability.

If any provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be fully effective.

13.9 References.

Unless the context clearly indicates to the contrary, a reference to a statute, regulation, document or provision shall be construed as referring to any subsequently enacted, adopted or executed counterpart.

13.10 Headings.

Headings and subheadings in this Agreement are inserted for convenience of reference only and are not to be considered in the construction of its provisions.

13.11 No Liability for Acts of Predecessor and Successor Trustees.

The Trustee shall have no liability for the acts or omissions of any predecessors or successors in office.

13.12 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

In witness of the foregoing, the undersigned have caused this instrument to be executed by their duly authorized officers as of the day and year first above written.

DELTA AIR LINES, INC.

By: *John B. Taylor*  
Title: Chief Investment Officer  
Delta Air Lines Benefit Trusts

Attest:

*Peggy J. McGraw*

THE CHASE MANHATTAN BANK

By: *Rose M. DeLuca*  
Title: Vice President

Attest:

*Joanne M. DeLuca*  
Delta Pilots Disability and Survivorship Trust